

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MISSOURI

DANLEY, RAY	)	Case No. 19-60880
DANLEY, TRINA	)	Chapter 7
Debtor(s).	)	
	)	
J. KEVIN CHECKETT, Trustee in	)	
Bankruptcy,	)	
Plaintiff,	)	
vs.	)	Adv. No. _____
	)	
CARVANA, LLC,	)	
Serve: Ernest C. Garcia, Chairman, President	)	
& Chief Executive Officer	)	
1930 W. Rio Salado Parkway	)	
Tempe, AZ 85218	)	
Defendant.	)	
_____	)	

**COMPLAINT FOR AVOIDANCE AND RECOVERY OF TRANSFERS  
OF PROPERTY [11U.S.C. Sections 544, 547, 548 & 550]**

J. Kevin Checkett, Trustee in bankruptcy of RAY and TRINA DANLEY, debtors  
("Plaintiff" or "Trustee"), alleges as follows:

**PARTIES**

1. On July 26, 2019, Debtors filed a voluntary petition under chapter 7 of the United States Bankruptcy Code.

2. The Trustee of the bankruptcy estate is operating pursuant to the rights, powers and duties of 11 U.S.C. §§547 and 550.

3. Trustee is informed and believes and thereon alleges that Defendant Carvana, LLC ("Carvana" or "Defendant") is an Arizona Limited Liability Company. Carvana together with its subsidiaries operates an e-commercial platform of buying and

selling used cars throughout the United States, including in the state of Missouri. Carvana may be served through its founder, president, CEO, and Chairman Ernest C. Garcia III.

### **JURISDICTION**

4. In this adversary proceeding, Trustee seeks to recover property of the estate's pursuant to the provisions of 11 U.S.C. §544-550.

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 151, 157, and § 1334 and Rule 1073-1 of the Local Rules of the United States District Court, Western District of Missouri.

6. This matter constitutes a statutorily and constitutionally "core proceeding" pursuant to 28 U.S.C. § 157(b)(2)(A), (E), (K), and (O), arising under Title 11 and in the Chapter 7 case of the Debtors, presently pending before the United States Bankruptcy Court for the Western District of Missouri.

### **VENUE**

7. Venue is proper in this court under 28 U.S.C. § 1409.

### **FIRST CAUSE OF ACTION**

#### **Claim for Relief to Avoid Preferential Transfers Pursuant to 11 U.S.C. §547(B)**

8. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 7 above as though fully set forth herein.

9. The debtors executed and delivered to Defendant a security agreement granting a security interest ("Transfer") in the following described property to-wit:

2018 Toyota, four door, VIN #4T1B11HK7JU075558

10. Defendant failed to perfect the security interest within 30 days as allowed under §547(c)(3)(B).

11. Within 90 days of the order for relief in this case, the Debtor transferred a security interest in such property to the Carvana on account of an antecedent debt in that on that date the Defendant perfected the security interest in the Toyota.

12. Debtor was insolvent at the time the Transfers were made.

**SECOND CAUSE OF ACTION**  
**Claim for Relief to Avoid Fraudulent Conveyances Pursuant to 11 U.S.C. §548**

13. Trustee incorporates by reference the allegations contained in paragraphs 1 through 12 above as though fully set forth herein.

14. To the extent that one or more of the Transfers were not on account of antecedent debt, Debtor did not receive reasonably equivalent value in exchange for the Transfer, and the Transfers are voidable pursuant to 11 U.S.C. §548(a)(1)(B).

**THIRD CAUSE OF ACTION**  
**Claim for Relief to Avoid Unperfected Lien Pursuant to 11 U.S.C. §544(a)**

15. Trustee incorporates by reference the allegations contained in paragraphs 1 through 14 above as though fully set forth herein.

16. To the extent that any of the Transfer of the Toyota lien are voidable because they are unperfected under state and federal law, the Trustee seeks to avoid them pursuant to §544(a).

17. The Trustee has the right of a hypothetical judgment creditor who may avoid any such transfer of property without regard to any knowledge of the Trustee or any creditor.

18. The Trustee is accorded the rights and powers of a hypothetical creditor who furnishes credit to the debtor at the time the bankruptcy case is filed and simultaneously acquires a judicial lien on the debtor's property, as permitted under applicable state or non-bankruptcy law.

19. The Trustee has the rights of a hypothetical creditor who extends credit to the debtor at the time the bankruptcy is filed and, who acquires, at that time, an unsatisfied execution concerning the indebtedness. 11 U.S.C. §544(a)

**FOURTH CAUSE OF ACTION**  
**Claim for Relief to Recover Avoided Transfers Against the**  
**Defendant for the Benefit of the Estate Pursuant to 11 U.S.C. §550**

20. Trustee incorporates by reference the allegations contained in paragraphs 1 through 19 above as though fully set forth herein.

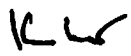
21. By reason of Section 550 of the Bankruptcy Act, the Trustee is entitled to recover the Transfer and void Carvana's lien or, alternatively obtain a money judgment for the value of the Toyota, plus interest thereon to the date of payment and the costs of this action including, but not limited to, reasonable attorneys' fees and court costs.

WHEREFORE, Trustee prays that this court enter its judgment as follows:

1. That the Toyota lien be avoidable under 11 U.S.C. §544-549;

2. That the Transfer of the Toyota, to the extent that they are avoided be recovered by Trustee pursuant to 11 U.S.C. §550;
3. Ordering Carvana, LLC to pay to Trustee for the benefit of the bankruptcy estate at least \$18,000.00 representing the amount of the Transfer;
4. Ordering Carvana, LLC to pay interest at the legal rate on the amount set forth until paid in full;
5. Ordering Carvana, LLC to pay the costs of suit incurred herein, including reasonable attorneys' fees;
6. Disallowing any claim presented by Carvana, LLC for payment in this case until the sums demanded herein are paid; and
7. Granting Trustee such other and further relief as the court deems just and proper.

CHECKETT & PAULY, P.C.

  
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